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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FWP/170225

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Kewaunee County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 07, 2016, at Kewaunee, Wisconsin.

The issue for determination is whether the agency correctly ended the Petitioner's FoodShare benefits, effective January 1, 2016.

NOTE: The record was held open until January 13, 2015, to give the Petitioner an opportunity to submit medical documentation. The Petitioner submitted progress notes from a [REDACTED], which have been marked as Exhibit 27.

Post hearing, the Petitioner contacted the Division of Hearings and Appeals to request an extension, to get records from her pain clinic, because she believes she might be exempt from the ABAWD work requirement. The Petitioner was advised that she could have some additional time, but that the Federal Regulations require a decision in this case to be issued by February 19, 2015 and do not allow a good cause extension of that deadline.

Petitioner was advised that if the pain clinic records were received at Hearings and Appeals, they would be forwarded to the agency for a determination concerning whether she meets an exemption to the ABAWD work requirement. If the Petitioner disagrees with that determination, she will have to file a NEW appeal.

As of the date this decision was issued, the documentation had not yet arrived at Hearings and Appeals.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Terry Schleis, Economic Support Specialist  
 Kewaunee County Department of Social Services  
 810 Lincoln Street  
 Kewaunee, WI 54216

ADMINISTRATIVE LAW JUDGE:  
 Mayumi M. Ishii  
 Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kewaunee County.
2. On July 21, 2015, the agency sent the Petitioner a notice, telling her that she was being referred to the FSET program and that her time limited benefits would begin August 2015. This notice told the Petitioner that the FSET agency would contact her to make an appointment. (Exhibit 3)
3. On September 28, 2015, the FSET office sent the Petitioner an appointment letter advising her of an appointment on September 30, 2015. This was sent to an address on [REDACTED]. The notice was returned to the agency on October 2, 2015. (Exhibit 6)
4. On October 19, 2015, the agency sent the Petitioner a notice that as of November 1, 2015, the Petitioner would not be enrolled in the FoodShare program, because she used up three months of her time limited benefits. (Exhibit 7)
5. On October 23, 2015, the FSET office sent the Petitioner a notice that included her employment plan. The plan required the Petitioner to conduct a weekly job search, nine hours per week; engage in career planning nine hours per week and to engage in on-line workshops two hours per week. (Exhibits 11)
6. October 28, 2015, the Petitioner signed that employment plan and returned it to the agency as directed. (Exhibit 25)
7. On November 20, 2015, the Petitioner signed another employment plan. This one required the Petitioner to engage in part-time employment 12 hours per week, employment search 4 hours per week and Skill Building 4 hours per week. (Exhibit 23)
8. Also on November 20, 2015, the Petitioner also filed a request for fair hearing with the Division of Hearings and Appeals on November 20, 2015. (Exhibit 1)
9. On an unspecified date, Petitioner's first FSET worker's employment with the agency ended, but that person did not communicate well with the temporary worker, which caused a delay in the Petitioner's enrollment. (Exhibits 16-18)

### **DISCUSSION**

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and was implemented statewide effective April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1* ABAWDs who are not exempt and who do not meet the work requirement, are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered a Non-ABAWD, if that person is:

1. Under 18 or age 50 and older,
2. Unable to work,
3. Residing in a FoodShare household with a child under age 18, or
4. Pregnant

*FSH §3.17.1.4*

An ABAWD may be exempt from work requirements if the person is:

1. Determined unfit for employment which includes:
  - a. Receiving temporary or permanent disability benefits
  - b. Mentally or physically unable to work, as determined by the IM agency
  - c. Verified as unable to work by a statement from a health care professional or a social worker.
2. Receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
3. Regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1)
5. A high school student 18 years of age or older, attending high school at least half time;
6. A primary caregiver of a dependent child under age 6 or an incapacitated person;
7. Receiving Transitional FS benefits; or
8. Meeting the ABAWD work requirement.

*FSH §3.17.1.4*

An ABAWD meets the ABAWD work requirement if one of the following applies:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
2. Participating and complying with an allowable work program at least 80 hours per month; \* [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.

*FSH, §13.17.1.7.*

It is a well-established principle that a moving party, meaning the party that wants to change the status quo, generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). Here, the moving party is the county agency, because it wants to end the Petitioner's FoodShare benefits. Thus, the agency bears the burden to prove it correctly ended the Petitioner's benefits.

It is the agency's contention that the Petitioner did not meet her participation requirements in the FSET program from August 2015 through October 2015, because she did not keep any of her appointments. However, this is not true.

The reliability of the agency's records, in this particular case, is highly questionable, given that the Appointment Walk-Ins printout doesn't show that the Petitioner checked-in with the agency on September 9, 2015 or October 14, 2015, but the Petitioner testified and the PIN COMMENTS also reflect that the

Petitioner kept those appointments. In addition, the e-mail correspondence indicates that Petitioner's first FSET worker's employment with the agency ended on an unspecified date and that this person failed to communicate with the successor worker, regarding the case, which caused a delay in the Petitioner's enrollment. Troubling too, is the fact that the only appointment letter in the record was returned to the FSET agency and no other notices have been provided to show that the FSET agency gave the Petitioner fair and proper notice of her appointments.

Petitioner testified credibly that she had a doctor's appointment for one appointment in August 2015 and that she showed up for a meeting in August 2015, only to find that her FSET worker went out of town. Petitioner testified that she did not hear anything else from the FSET agency in August 2012.

Under section 6.6.1 of the *FoodShare Employment and Training Handbook (Release 15-01)*, it states, "Good cause may be granted for temporary circumstances beyond the ABAWD's control." That section lists some examples of good cause reasons for non-participation, including when, "an individual is referred to FSET and there is an agency delay in enrollment." Section 6.6.1 also states that the list is not exhaustive. *See also Ops Memo 14-27 – Amended 5/18/15.*

Given the lack of evidence that the Petitioner was given proper notice of her August appointments, given the internal communication problems at the FSET agency, given that Petitioner submitted medical records, showing that she had appointments in August, and given the Petitioner's credible testimony that she went to an appointment only to find that her worker didn't show up for it, it is found that the Petitioner had good cause for her non-participation in August 2015.

With regard to September 2015, the Petitioner testified that she did not get a notice for the September 2, 2015 appointment. As discussed above, she kept the September 9, 2015 appointment, but did not enroll, because she has ADHD and is learning disabled, and did not fully understand what was being asked of her. The Petitioner testified credibly that she could not have kept the September 23, 2015 appointment, because she didn't receive the notice until that day, which was the day before her wedding.

Petitioner again, gave credible testimony and the agency failed to provide any appointment notices to prove she was given fair notice of those appointments. On the contrary, the notice for the September 30, 2015 notice was returned to the agency. Further, the e-mail correspondence indicates that there were internal communication problems at the agency. So clearly, something was amiss with the agency's handling of this case. Finally, it was readily apparent from the manner in which the Petitioner testified that she is a more simple individual that might need assistance understanding matters such as these, so it was not unreasonable for her to want to discuss it with her husband or someone else, first. As such, I am finding good cause for the Petitioner's non-participation in September 2015.

With regard to October 2015, the Petitioner kept the one appointment that the agency made for her that month (October 14, 2015) and enrolled in the program with the assistance of her husband. Petitioner did not refute the claim that she did not provide her job logs for the two weeks following her enrollment. Thus, while Petitioner had good cause for her non-participation prior to October 14, 2015, she has not established good cause for her non-participation during the two weeks in October 2015, after that time. Thus, the Petitioner used up one of her time limited benefit months.

NOTE: This decision should not be construed to mean that the Petitioner has since met the ABAWD work requirement for November 2015 going forward. That is a separate determination that the agency will have to make. If the Petitioner disagrees with that determination, the Petitioner will have to file a NEW appeal.

### CONCLUSIONS OF LAW

The agency did not correctly end the Petitioner's FoodShare benefits effective November 1, 2015, because she had only used up one of her time-limited benefit months.

**THEREFORE, it is**

### ORDERED

That the agency reinstate the Petitioner's FoodShare benefits, effective November 1, 2015. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important, or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

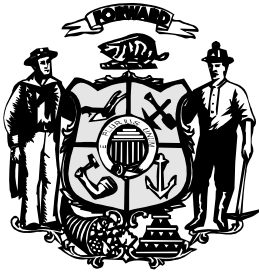
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of January, 2016.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 15, 2016.

Kewaunee County Department of Social Services  
Division of Health Care Access and Accountability